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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY DEAN,

Defendant and Appellant.

B212558

(Los Angeles County
Super. Ct. No. LA050568)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Latin, Judge. Affirmed.

Marcia C. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

Gregory Dean appeals from the judgment entered following a jury trial in which he was convicted of murder with the personal use of a firearm and two counts of assault with a semi-automatic weapon. Defendant was sentenced to state prison for a substantial term. He contends the trial court improperly failed to hold a *Marsden*¹ hearing when he asked to represent himself for a motion for new trial based on ineffective assistance of counsel. We affirm.

BACKGROUND

On October 20, 2005, defendant pointed a semiautomatic handgun at Americo Martinez Rodriguez and Jose Rodriguez from close range and pulled the trigger several times, but the gun did not fire. When Americo's and Jose's friend, Daniel Velasquez, approached, defendant shot and killed him from 10 feet away.

The defense was accidental shooting.

Defendant was convicted on April 23, 2008. Sentencing was initially set for May 16, 2008. On May 13, 2008, defendant's counsel filed a motion for new trial on grounds of insufficient evidence. The sentencing hearing was continued five times, eventually being heard on December 2, 2008.

At the sentencing hearing, defendant made a motion to represent himself. The following colloquy occurred.

"Defendant's Counsel: Your honor, Mr. Dean has informed me this morning that he wishes to go pro per, and he just—when he was brought out.

The Court: Okay. Is that right?

The Defendant: Yes, Sir.

The Court: Why is that?

The Defendant: You know, I feel that I could do a better job.

The Court: Arguing your motion for new trial?

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

The Defendant: Yes, Sir.

The Court: All right, I'll send you back[,] have you fill out *Faretta*^[2] waivers. You can fill them out, and I'll review it with you. It's just for sentencing, you know that[,] right? Your trial is over. Do you want to be pro per on appeal, is that what you want?

The Defendant: For putting the motion for retrial, or for my own motion.

The Court: Well, I'm not going to give you time to submit motions. I mean, I'll hear you on that, but—

The Defendant: All right.

The Court: I'm probably not going to be inclined to continue this sentencing. This has been half a year at least, since your trial, so that you could submit another motion. You already had motions filed, but we are here for sentencing today.”

After a recess was taken, the colloquy continued.

“The Court: Mr. Dean, is it still your desire to represent yourself for purposes of this hearing and motion?

The Defendant: Yes.

The Court: Can you explain to me, since you've already had your trial, what it is you hope to accomplish by going pro per that you wouldn't be able to do if you had an attorney representing you?

The Defendant: For the proper motion that I want to put—

The Court: What do you mean by that?

The Defendant: To—there's a motion that I know that he wouldn't put in. He probably wouldn't put in.

The Court: Like what?

The Defendant: Inassistance effective of counsel (sic).

The Court: That's one he wouldn't put in. Would you put that in, Mr. Dicker?

Defendant's Counsel: No.

² *Faretta v. California* (1975) 422 U.S. 806.

The Court: And why are you mentioning that today as opposed to several months ago? You've been back here many, many times over a long period.

The Defendant: I didn't know I could do it back then. I was trying [to] fire him Wednesday, and they wouldn't let me, so I went to the law library, and I looked over some things.

The Court: Okay. Any other motions that you would bring?

The Defendant: That's probably it. That's it.

The Court: And what if I told you, because I will be telling you, and I think it's only fair that I tell you now instead of after you've made the decision, that I intend to deny that motion. In other words, it's not that I've heard the merits of it, because you haven't filed it, but I'm going to deny any further continuances of the sentencing hearing for the bringing of that motion. It's untimely, and the people have the right to have an expeditious disposition. The case was decided in April of this year. It's now December. So it's been nine—eight months since you were convicted, and you have never made this request before. If I told you that I was going to give you pro per privileges and that I was going to very likely deny your request for any further delays in the case, would you still want to be pro per?

The Defendant: Yes.

The Court: Why?

The Defendant: Because I feel that I could do a better job.

The Court: Doing what?

The Defendant: With getting what I need back into court.

The Court: No. Your sentencing is going to go forward today. So that's why I'm telling you. What is it that you think you can do on your own that Mr. Dicker could not do for you?

The Defendant: I guess I couldn't do nothing if you deny it.

The Court: Right. And so that's why I say—I'll let you—I'll let you make the request once you're pro per, but once I deny the request, and I'm inclined to deny it, then, you're pro per and you don't have [a] lawyer who understand[s] and knows the law to

argue your motion for a new trial or to argue for why you should get a lower sentence than the one that the law requires that I impose. You don't know the sentencing schemes. You don't know anything about sentencing, do you?

The Defendant: No, that's why I wanted to go to the library, to look over things and study my case up.

The Court: All right.

The Defendant: I—

The Court: But you have to go forward today—

The Defendant: I haven't even been able to study my case, he never gave me nothing to study. Nothing, no.

The Court: That's because he represents you and he studied everything. If the case went forward today, would you be able to argue to me how the sentencing scheme works, and how you should be sentenced in these cases? Do you [know] which counts, for example, run concurrent and which run consecutive?

The Defendant: No, not yet. That's why I wanted to go, to study my case.

The Court: Well, what would you do if I grant your request to go pro per and then we have the sentencing today, how would you effectively be able to represent yourself? That's my concern.

The Defendant: I wouldn't know how to.

The Court: All right. The request to go pro per is therefore denied."

DISCUSSION

Defendant does not contend the trial court improperly denied his request to represent himself. He does not contend the trial court improperly indicated it would deny any request for a continuance to file a motion for new trial. Finally, he does not contend his counsel was ineffective. Defendant's only contention is that his request to represent himself was tantamount to requesting substitution of counsel (he was requesting that he

be allowed to substitute himself in place of his current attorney), which was sufficient to trigger a hearing under *Marsden* and its progeny. We disagree.

Contrary to defendant's contention, when a defendant seeks to represent himself because he is dissatisfied with his counsel, the trial court is "not obliged to . . . treat the request as one made pursuant to *People v. Marsden, supra*, 2 Cal.3d 118." (*People v. Cummings* (1993) 4 Cal.4th 1233, 1319, fn. 60.) "As the Attorney General correctly points out, defendant never requested different counsel. Instead, he sought self-representation. His expressions of dissatisfaction with his attorney as a reason for this decision are insufficient to require the court to inquire whether he wanted substitute counsel. [Citation.]" (*People v. Frierson* (1991) 53 Cal.3d 730, 741; *People v. Burton* (1989) 48 Cal.3d 843, 855.)

The trial court had no obligation to hold a *Marsden* hearing.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.